# Supreme Court of the United States.

**OCTOBER TERM, 1899.**

*No. 45, Original.*

THE STATE OF MISSOURI, COMPLAINANT,

*vs.*

THE STATE OF ILLINOIS AND THE SANITARY DISTRICT OF CHICAGO.

## MOTION FOR LEAVE TO FILE BILL OF COMPLAINT, AND BILL OF COMPLAINT.

EDWARD C. CROW,
*Attorney General of Missouri.*

B. SCHNURMACHER,
*Of Counsel.*

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C. 1-17-1900

IN THE

# Supreme Court of the United States.

*In Equity.*

THE STATE OF MISSOURI, COMPLAINANT,

*vs.*

THE STATE OF ILLINOIS AND THE SANITARY DISTRICT OF CHICAGO, DEFENDANTS.

Now comes the complainant, The State of Missouri, by Edward C. Crow, its attorney general, and B. Schnurmacher, its counsel, and moves the court for leave to file and to present the accompanying bill of complaint.

EDWARD C. CROW,
*Attorney General.*

B. SCHNURMACHER, *Counsel.*

IN THE SUPREME COURT OF THE UNITED STATES.

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| THE STATE OF MISSOURI, *Complainant*, *vs.* THE STATE OF ILLINOIS and THE SANITARY DISTRICT OF CHICAGO, *Defendants.* | In Equity. Bill for Injunction. |

*To the Honorable the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:*

The complainant, The State of Missouri, and one of the States of the United States, brings this its bill of complaint against The State of Illinois, one of the States of the United States, and The Sanitary District of Chicago, a public corporation, organized under the laws of the State of Illinois, and located in part in the city of Chicago and in the county of Cook, in said State of Illinois, and a citizen of the State of Illinois.

And your orator complains and says that it is a State containing a population of upwards of three millions of people, and lying on the west bank of the Mississippi river, a public, navigable, and running stream, and having a frontage on said stream of over four hundred miles.

And your orator shows that by the act of Congress providing for the organization and admission of Illinois and Missouri as States of the Union it was declared that the western boundary of Illinois and the eastern boundary of Missouri should be the middle of the main channel of the Mississippi river; that the shores of the Mississippi river, where its waters form the Missouri and Illinois boundary, and the soil under the waters thereof were not granted by the Constitution to the United States, but were reserved to the States of Illinois and Missouri respectively.

And your orator shows that the States of Missouri and

Illinois each have concurrent general jurisdiction over the waters of the Mississippi river forming the boundary between them, and each of said States has exclusive territorial jurisdiction over that portion adjacent to its own shore, and your orator shows that the Illinois river empties into the Mississippi river at a point above the city of St. Louis, on the Illinois side of said Mississippi river.

And your orator further shows that within the territory of your orator and on the banks and shores of said Mississippi river and below the mouth of the Illinois river are many cities and towns in the State of Missouri, and many thousands of persons who are compelled to and do rely upon the waters of said river, in their regular, natural, and accustomed flow, for their daily necessary supply of water for drinking and all other domestic and agricultural and manufacturing purposes, and for watering stock and animals of all kinds, and that said Mississippi river has been flowing in its regular course and has been used for the purposes aforesaid by the inhabitants of the said State of Missouri for a time whereof the memory of man runneth not to the contrary, and that said river and its waters and the use thereof for drinking, agricultural, and manufacturing purposes, in their accustomed and natural flow, are indispensable to the life and health and business of many thousands of the inhabitants of the State of Missouri and of great value to your orator as a State.

And your orator shows that cities and towns below the mouth of said Illinois river, within the territory of your orator, do and are compelled, by means of water works, water towers, and intakes, built and constructed for that purpose, to supply the inhabitants of said cities and towns with an adequate supply of pure and wholesome water, fit and healthful for drinking and all other domestic purposes and uses, from the said Mississippi river so flowing in its ancient, accustomed, and natural course.

And your orator shows that said water-works systems are

constructed with reference to said Mississippi river and for the purpose of taking water therefrom and not from any other source.

And your orator shows that heretofore, to wit, in 1889, the State of Illinois enacted a law known as the Sanitary District act, together with an act for the improvement of the Illinois and Des Plaines rivers, and that under said act of said State the said corporation known as the said Sanitary District of Chicago was organized and is now existing and operating, and that by the express terms of said act any canal or drain corporation organized in accordance with its provisions may have conditions, restrictions, or additional requirements placed on said corporation, or the act authorizing the creation of said corporation may be amended or repealed, and that by the express provisions of said act, before any water or sewage shall be admitted into any channel constructed under said act, the trustees of said channel shall notify the governor of Illinois of the completion of said channel, and the governor of Illinois shall appoint three commissioners to examine said canal or channel and report to the governor if the same complies with the act of the State of Illinois; and if it does, the governor shall authorize the water and sewage to be turned into said channel; and that without the said permit it cannot be so turned in; and that by the general provisions of said act said channel is at all times subject to the control and supervision of the State of Illinois and her authorities.

And your orator further shows that the Chicago river is situated in the basin of Lake Michigan and has two forks or branches flowing through the city of Chicago and into Lake Michigan, and that the natural drainage of Chicago, Illinois, is into Lake Michigan, and the sewage and drainage of the territory embraced in the defendant's district, The Sanitary District of Chicago, is led into or flows into the Chicago river and Lake Michigan.

And your orator further shows that the defendant herein,

The Sanitary District of Chicago, with the authority of the State of Illinois, and acting as a governmental agency of said State, and under the supervision and control and subject to the approval of the State of Illinois, has constructed a channel or open drain from the west fork of the south branch of the Chicago river, in the city of Chicago and county of Cook, in the State of Illinois, to a point near Lockport, in the county of Will, in said State, where said channel or drain connects with and empties into the Des Plaines river, which empties into the Illinois river, and which latter river flows and empties into the Mississippi river at a point distant about forty-three miles above the city of St. Louis, Missouri.

And your orator further states that the channel built by the Sanitary District of Chicago was so built by said Sanitary District as one of the governmental agencies of the State of Illinois, and by the pretended lawful authority of said State, and under the direction, supervision, and control and governmental power of the State of Illinois, and which said State has heretofore at all times sanctioned and now, through its governor and other officers, sanctions the building of said channel and opening thereof.

And your orator further shows that in the construction of said channel or drain the defendant The Sanitary District of Chicago, Illinois, with the sanction and approval of the State of Illinois, cut through the natural ridge or water-shed which divides the basin of Lake Michigan from the basins of the Des Plaines and Illinois rivers and the basin of the Mississippi river, and that having so constructed said channel and having about completed the same, and having, under the supervision of and with the sanction of the State of Illinois, extended said artificial channel through said natural divide of the water-shed, the defendants now propose and threaten to receive into said channel or drain the sewage matter and filth of the Sanitary District of Chicago, which embraces nearly the whole city of Chicago and a

portion of the county of Cook, and, without any legal authority so to do, has already in part effectuated its said threat and purpose and threatens to permit and to cause said sewage and filth, by artificial means of pumping and otherwise, to flow through the channel or drain towards and into the said Des Plaines river and eventually into the Mississippi river, thereby, with the approval of and subject to the inspection and control and supervision of the State of Illinois, and by the pretended authority thereof, reversing the natural flow of said Chicago river.

And your orator further shows that the sewage matter and poisonous filth which it is thus threatened to receive and to permit and to cause to flow through said artificial channel into said Des Plaines river, is that which is created by a population of upwards of one and one-half millions of people, besides that which is created by a great number of stock yards, slaughtering establishments, rendering establishments, distilleries, and other business enterprises and industries lining both sides of the Chicago river, producing filth and noxious matters; all of which are there discharged into the said Chicago river or drained therein from the surface.

And your orator further shows that for many years past the said city of Chicago, the greater portion of which is embraced in the limits of the defendant corporation, The Sanitary District of Chicago, as aforesaid, has been discharging its sewage matter and filth into the Chicago river and into Lake Michigan in such large quantities that much of it has accumulated in the bed and along the sides of the river and upon the bed of said Lake Michigan, near the shores thereof, and that the plan threatened and attempted now to be adopted by the defendant The Sanitary District of Chicago, acting in conjunction with and subject to the control of the defendant The State of Illinois, and by the pretended authority of the said State of Illinois, will loosen said accumulated matter and filth, and will also direct it

and cause it to flow towards and into said artificial channel or drain, and thence into said Des Plaines river, and finally into the Mississippi river and into the waters thereof within the jurisdiction and under the control of your orator and past the homes of the inhabitants of your orator and the towns and cities within the borders of your orator, and past the water works of said cities and towns within the State of Missouri.

And your orator further shows that the amount of said undefecated filth and sewage and poisonous and unhealthful and noxious matters proposed to be, and now about to be, permitted to be turned into said artificial channel and through said Des Plaines and Illinois rivers into the Mississippi river from the said Sanitary District of Chicago by the defendants, acting jointly, will amount daily to about fifteen hundred tons, and that if defendants should be permitted to carry their said threats into execution, and should cause said above amount of undefecated sewage and other poisonous and noxious matters, which would otherwise flow into Lake Michigan, to flow into the Mississippi river, that the waters of the Mississippi river within the jurisdiction of your orator will of a certainty be poisoned and polluted and rendered wholly unfit and unhealthful for drinking and domestic uses, and will render wholly valueless and entirely worthless the various water-works systems of towns and cities on the borders of the State of Missouri, established and acquired at great cost and expense, and will deprive your orator, The State of Missouri, and its inhabitants, of the right to the use of the waters of said river for drinking and all other domestic and manufacturing and agricultural purposes, as said water has been so used in its accustomed and natural flow heretofore for the length of time that the memory of man runneth not to the contrary thereof.

And that said threatened action of the defendants will amount to a direct and continuing nuisance and be an interference with the use by your orator and its inhabitants

of the waters of the Mississippi river flowing in their natural state, polluting and poisoning the same by the means aforesaid, whereby the health and lives of the inhabitants of your orator will be endangered and the business interests of said State will be greatly and irreparably injured, and which said damage to the lives and health and the business interests of said State resulting from said poisoning and polluting of said waters, as aforesaid, to your orator cannot be estimated in money value.

And your orator on information and belief states and charges the fact to be that said fifteen hundred tons of poisonous undefecated filth and sewage of said Sanitary District of Chicago will be daily carried through said artificial channel and sent through the Des Plaines and Illinois rivers into the Mississippi, and great quantities thereof will be deposited in the bed and soil of said river belonging to your orator and wholly within the jurisdiction thereof, to your orator's great and irreparable damage, and that the fifteen hundred tons of undefecated sewage and filth now about to be daily injected into the waters of the Mississippi river and into the portion thereof over which the State of Missouri has jurisdiction, and from which thousands of her inhabitants obtain drinking water, will pollute and poison the said water of the Mississippi river to such an extent as to render it unwholesome and unfit and unhealthful for use for drinking by the said inhabitants in the territory of your orator and unfit for use for watering stock and for manufacturing purposes.

And your orator further shows that great quantities of undefecated sewage turned into the Mississippi river in the manner and by the means aforesaid will poison and pollute said water with the germs of disease of various and many kinds. And your orator further shows that the acts herein complained of on the part of the State of Illinois, acting in conjunction with one of her governmental agencies, the said Sanitary District of Chicago, will cause a continuing nui-

sance in the Mississippi river, and that the said State of Illinois has no power or authority to cause or permit or assist in causing the commission and continuance of a nuisance in the flowing waters of the Mississippi river, a navigable stream, to the detriment and irreparable and continuing damage and injury of the State of Missouri, and the continuing and irreparable injury to the lives and health of the citizens and inhabitants of the State of Missouri, and that unless restrained by the order and decree of this court the defendants, The State of Illinois and The Sanitary District of Chicago, acting together, will, in accordance with the terms of the act under which said sanitary district is organized, upon the permit and authority of the governor of Illinois and of the State of Illinois, turn said water and sewage aforesaid, by the manner and means aforesaid, into the Des Plaines and Illinois rivers and thence into the Mississippi, all of which your orator says and avers is contrary to equity and good conscience, and would result in the manifest and irreparable injury of your orator and the health of her citizens in the premises, and your orator is wholly without remedy at law and without any adequate remedy to prevent the flowing of said sewage, as aforesaid, save by the interposition of this court.

Forasmuch as your orator can have no adequate relief except in this court, and to the end, therefore, that the defendants may, if they can, show why your orator should not have the relief prayed, and to the end that the defendants may make a full, true, direct, and perfect answer to the matters hereinbefore stated and charged, but not under oath, an answer under oath being hereby expressly waived, and to the end that the defendants, their officers, agents, servants, and employés, may be restrained by injunction issuing out of this court from receiving or permitting any sewage to be received or discharged into said artificial channel or drain, and from permitting the same to flow or causing the same to be made to flow through said channel

or drain towards and into the Des Plaines river, your orator prays that your honors may grant a writ of injunction, under the seal of this honorable court, properly restraining and enjoining the defendants, the officers, agents, employés, and servants of the Sanitary District of Chicago and the State of Illinois, from permitting or causing any of said sewage to be discharged into said channel or drain, and from permitting or causing said sewage and poisonous filth thence to flow into said Des Plaines river; that defendant The State of Illinois be enjoined and restrained from issuing to its codefendant permission and authority to do and perform the acts aforesaid or to allow them to be done; and your orator also prays for a provisional or temporary injunction pending this cause, restraining and enjoining the several acts aforesaid, and for such other and further relief as the equity of the case may require and to your honors may seem meet.

May it please your honors to grant unto your orator not only a writ of injunction conformable to the prayer of this bill, but also a writ of subpœna of the United States of America, directed to The State of Illinois, the governor and attorney general thereof, and to said Sanitary District of Chicago, its officers, trustees, and agents, commanding them on a day certain to appear and answer unto this bill of complaint, and to abide such order and decree of the court in the premises as to the court shall seem proper and required by the principles of equity and good conscience.

THE STATE OF MISSOURI,
By LON V. STEPHENS, *Governor.*

EDWARD C. CROW,
*Attorney General of Missouri.*
B. SCHNURMACHER, *Of Counsel.*

UNITED STATES OF AMERICA:

IN THE SUPREME COURT OF THE UNITED STATES.

On this 17th day of January, 1900, before me, James D. Maher, notary public, personally appeared Lon V. Stephens, governor of the State of Missouri, the complainant above named, who, being by me duly sworn, deposes and says that he is the governor of Missouri and familiar with its affairs and business; that he has read the foregoing bill of complaint and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated on information and belief, and as to those matters he verily believes it to be true.

LON V. STEPHENS.

Subscribed and sworn to before me this 17th day of January, A. D. 1900.

[SEAL.] JAMES D. MAHER,
*Notary Public, District of Columbia.*

[Endorsed:] In the Supreme Court of the United States. The State of Missouri, complainant, *vs.* The State of Illinois and The Sanitary District of Chicago, defendants. In equity. Bill of injunction.

IN THE

# Supreme Court of the United States

*In Equity.*

THE STATE OF MISSOURI, COMPLAINANT,

*vs.*

THE STATE OF ILLINOIS AND THE SANITARY DISTRICT OF CHICAGO, A CORPORATION AND CITIZEN OF THE STATE OF ILLINOIS, DEFENDANTS.

## Suggestions in Support of Motion for Leave to File Bill.

The general purpose and object of this bill is to enjoin the State of Illinois and the Sanitary District of Chicago, one of its public subdivisions and agencies, from discharging the undefecated sewage and noxious filth of the city of Chicago into the Mississippi river by artificial methods.

The bill shows that these matters are at present discharged into the Chicago river and Lake Michigan; that the natural flow of the river is into the lake, and that by means of an artificial channel, which has been cut through a natural divide or water-shed, and by means of a system of pumping works, it is proposed to reverse nature, and to force the sewage to flow into the Desplaines river, thence into the Illinois

river, and finally into the Mississippi, which forms the eastern boundary of the State of Missouri.

The bill charges that if these acts be permitted the water of the river will of a certainty be so polluted as to render it unfit for drinking, for watering stock, for manufacturing, agricultural, and domestic uses, and that thousands of inhabitants of Missouri are dependent upon the water of the Mississippi river for these various purposes. It is charged that not only is the health of the people menaced, but that deposits of filth in the river will affect that portion of its bed belonging to the State, and will create a continuing public nuisance. The facts in detail appear in the bill and will not be here recited.

It is respectfully submitted that the Supreme Court of the United States has original jurisdiction of a cause of this character.

Article III, section 1, of the Constitution of the United States declares:

"The judicial power of the United States shall be in one Supreme Court, and in such inferior courts as the Congress may, from time to time, ordain and establish."

Section 2 of the same article says:

"The judicial power shall extend to all cases of law and equity arising under this constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; * * * *to controversies between two or more States, between a State and citizens af another State,* * * * *and those in which a State shall be a party*, the Supreme Court shall have original jurisdiction."

This is a controversy between two States and between a State and a citizen of another State. The parties to the action do not bring it within the amendment XI to the Constitution, which provides:

"The judicial power of the United States shall not be construed to extend to any suit in law or equity commenced

or prosecuted *against* one of the United States by *citizens of another State*, or by citizens or subjects of any foreign State."

As between the State of Missouri and the Sanitary District of Chicago (a citizen of Illinois), this cause presents a controversy between a State and a citizen of another State, and therefore it is within the jurisdiction of the Federal Supreme Court, as given to said court by the last clause of article III of the Constitution, which gives to the Supreme Court original jurisdiction in all cases in which a State shall be a party.

Cherokee Nation *vs.* State of Georgia (1831), 5 Peters' Rep., p. 1.

The controversy here relates to a navigable stream, and the effect of the action of the defendants on said stream, one-half of which is, by act of Congress, within the jurisdiction of the sovereign State of Missouri. The State of Missouri must have sovereignty enough to protect her own citizens and the lives and health thereof. She cannot, as a State, make common war upon the State of Illinois or the Sanitary District of Chicago. She cannot act beyond her own borders, and cannot invade the city of Chicago or the territory of the State of Illinois with an armed force to protect her citizens against the threatened danger that will come to them by the draining of the sewage of the city of Chicago into the Mississippi river. She has but one tribunal to which she can appeal, and she now appeals to that great tribunal established in the Constitution of the United States, with original and plenary jurisdiction to hear and determine controversies between a State and citizens of another State.

Alexander Hamilton, in the Federalist, at pages 363, 364, No. LXXX, in speaking of the extent of the Federal judicature, says:

"It seems scarcely to admit of controversy that the judiciary power of the Union ought to extend to these several descriptions of cases: 1st, to all those which arise out of

the laws of the United States, passed in pursuance of their just and constitutional powers of legislation; 2nd, to all those which concern the execution of the provisions expressly contained in the articles of Union; 3rd, to all those in which the United States are parties; 4th, to all those which involve the peace of the confederacy, whether they relate to intercourse between the United States and foreign nations, *or to that between the States themselves;* 5th, to all those which originate on the high seas, and are of admiralty or maritime jurisdiction, *and, lastly, to all those in which the State tribunals cannot be supposed to be impartial and unbiased.*"

And again, on page 365, in speaking of the reasons and the logic of the power of determining causes between the States, he says:

"The power of determining cases *between two States,* between one State and the citizens of another, and between citizens of different States, is perhaps not less essential to the peace of the Union than that which has been just examined. History gives us a horrid picture of the dissensions and private wars which distracted and desolated Germany prior to the institution of the imperial chamber by Maximilian, toward the close of the 15th century, and informs us at the same time of the vast influence of that institution in appeasing the disorders and establishing tranquillity of the empire. This was a court invested with authority to decide finally all differences among the members of the Germanic body."

And again he says:

"If it be a just principle that every government ought to possess the means of executing its own provisions by its own authority, it will follow that, in order to the inviolable maintenance of that equality of privileges and immunities to which citizens of the Union will be entitled, the national judiciary ought to preside in all cases *in which one State or its citizens are opposed to another State or its citizens.* To secure the full effect of so fundamental a provision against all evasion and subterfuge, it is necessary that its construction should be committed to that tribunal which, having no local

attachments, will be likely to be impartial between the different States and their citizens, and which, owing its official existence to the Union, will never be likely to feel any bias inauspicious to the principles on which it is founded."

And again on page 374, LXXXI, he says:

"The Supreme Court is to be invested with original jurisdiction only 'in cases affecting ambassadors, other public ministers, and consuls, and those in which a State shall be a party.' Public ministers of every class are the immediate representatives of their sovereigns. All questions in which they are concerned are so directly connected with the public peace that as well for the preservation of this, as out of respect to the sovereignties they represent, it is both expedient and proper that such questions should be submitted in the first instance to the highest judicatory of the nation. * * * In cases in which a State might happen to be a party, it would ill suit its dignity to be turned over to an inferior tribunal."

And in another place Mr. Hamilton said:

"Whatever practices may have a tendency to disturb the harmony of the States are proper objects of Federal superintendence and control."

As early as 1792, in the case of *Georgia vs. Brailsford*, 2 Dallas, 406, the Supreme Court exercised the original jurisdiction conferred by the Constitution, with no other statutes to regulate it than the act of 1789, and no question was then made nor doubt expressed as to the authority of the court.

The case of *Oswald vs. State of Georgia* is one in which the court regulated the form and nature of the process against a State, and directed it to be served on the governor and attorney general. But in the case of *Chisholm's Executors vs. State of Georgia*, at the February term, 1793, reported in 2 Dallas, 419, the authority of the court in this respect was questioned, and brought to its attention in the argument of counsel, and the report shows how carefully and thoroughly the subject was considered, and each of

the judges delivered a separate opinion, in which these questions, as to the jurisdiction of the court and the mode of exercising it, are elaborately examined.

24 Howard, 96.

For an injury to a State she may maintain a suit in a court of competent jurisdiction.

*State of Pennsylvania vs. Wheeling Bridge Co.*, 13 Howard, 518.

*King of France vs. Morris*, 3 Yates, 251.

*King of Spain vs. Oliver*, Peters C. C. R., 276.

*Nabob of the Cornatic vs. East India Co.*, 1 Ves., Jr., 382.

*Don Diego vs. Jolyfe*, Hobart, p. 86.

*Columbian Government vs. Rothschild*, 1 Sin., 94.

*Duke of Brunswick vs. King of Hanover*, 6 Beav., 2.

*Story's Eq. Pl.*, sec. 55.

*Rhode Island vs. Massachusetts*, 12 Peters, 720; 4 How., 592.

*Mayor of New Orleans vs. U. S.*, 10 Peters, 672.

The equitable powers of the Supreme Court of the United States are adequate to grant relief against a public nuisance, and where a State is a party to the suit the Supreme Court has original jurisdiction.

U. S. Constitution, art. III, secs. 1 and 2.

*City of Georgetown vs. Alexandria Canal*, 12 Peters, 91.

*Story's Commentaries*, p. 570.

*Federalist*, No. 80.

*Osborn vs. Bank of U. S.*, 9 Wheat., 839.

*Bank of U. S. vs. Planters' Bank*, 9 Wheat., 904.

In the case of *State of Pennsylvania vs. Wheeling Bridge Company*, 13 Howard, 518, this court enjoined the building of a bridge over the Ohio river fifty miles beyond the terri-

tory of Pennsylvania, which was being constructed under color of the statutes of the State of Virginia. The bridge was shown to be an obstruction to interstate commerce between the State of Pennsylvania and other States, and that the obstruction would tend to decrease the revenues of the State from certain highways of commerce constructed by the State of Pennsylvania within her own borders.

In *Wisconsin vs. Duluth*, 96 U. S., 381, this court took jurisdiction of a bill filed by the State of Wisconsin against the city of Duluth, in the State of Minnesota, to enjoin the obstruction and diversion of the waters of the St. Louis river from their natural course, to the prejudice of the rights of the State of Wisconsin and of her citizens, who had an interest in the continuance of the channel in its natural and usual course.

If the State of Missouri were an absolutely independent foreign sovereign, with the Mississippi river dividing, as it does now, her territory as a foreign sovereign from the Republic of the United States and the State of Illinois, Missouri would then undoubtedly have the right to sue in the courts of the United States to restrain unlawful acts which, if not prevented, would damage the health and lives and property of the citizens of Missouri. The question then comes to this: Has the State of Missouri surrendered or given up so completely her sovereignty as will prevent her, at least in a court of the United States, from suing to protect the waters and streams over which she has jurisdiction, in order to protect the lives and health of her citizens against the unlawful acts of another State or the citizens of another State?

As to the other States of the Union and the citizens of those States, we believe her right to sue them in every civil case, at law and in equity, in the great tribunal of the Federal sovereign, is specially reserved, and this court said in *Rhode Island vs. Massachusetts*, p. 719:

"Those States, in their highest sovereign capacity, in the convention of the people thereof, on whom, by the Revolu-

tion, the prerogative of the Crown and the transcendent power of Parliament devolved in a plenitude unimpaired by act and controllable by no authority, adopted a constitution by which they respectively made to the United States a grant of judicial power over controversies *between two or more States*. By the Constitution it was ordained that this judicial power, *in cases where a State was a party, should be exercised by this court as one of original jurisdiction*. The States waived their exemption from judicial power as sovereigns by original and inherent right, by their own grant of this exercise over themselves in such cases, but which they would not grant to any inferior tribunal."

And again, in the same decision, this court said:

"All States have transferred the decision of their controversies to this court; each has a right to demand of us the exercise of the power which they had made judicial by the confederation of 1781 and 1788, that we should do that which neither a State or Congress could do, settle the controversies between them."

The rule is laid down in the case of *Attorney General vs. Borough of Birmingham* that special damage need not be shown to give the right of relief by injunction to the public.

4 Kay & Johnson's Rep., 528.

If it be said that complainant should have made application before defendants expended their money upon the building of the sewage channel, our answer is that complainant would have been met with the objection that the defendants had a right to and were bound to drain the city of Chicago, provided they created no nuisance thereby, and defendants would further have met the State of Missouri with the assertion that no nuisance would eventually arise, and the bill would likely have been dismissed on the ground

that complainant's right does not arise until the nuisance has been or is about to be created.

2 Phillips, 209.

*Attorney General vs. Birmingham*, 4 Kay & J. Rep., 528.

The defendant may contend that the inhabitants of Chicago have a right to discharge their sewage into this artificial channel because they had previously emptied it into the Chicago river, thence into the Illinois and Michigan canal, thence into the Desplaines river, thence into the Illinois river, and eventually into the Mississippi. But the answer to this is that the right thus claimed is like that which exists in adjoining mines upon different levels. From the necessity of the case every owner of a mine must submit to the inconvenience of having water of an adjoining mine upon a higher level descend upon his mine, *so long as it descends in the natural course of drainage;* but that does not entitle the owner of the adjoining mine to throw upon him, *in an unnatural and more objectionable manner*, water which might descend upon him in a modified form, not occasioning the same amount of injury to his property.

In the case at bar the new channel is many times larger than the old canal, enters the Desplaines river at a different place, and causes the water to descend, *not in the natural course of drainag* but unnaturally and artificially, into the Mississippi river, *in larger quantities and much more polluted;* and this the defendants have no right to do.

*Attorney General vs. Birmingham*, 4 Kay and Johnson's Rep., 542.

The pollution of a fresh-water, navigable stream by carrying into it the sewage of a town or the refuse of a mill,

which destroys the value of the water for primary use, is a public nuisance and actionable in behalf of the public.

*Wood on Nuisances*, 444, 486.
*Attorney General vs. Leeds*, L. R., 1 Chancery App., 583.
*Goldsmith vs. Tunbridge Wells*, L. R., 1 Ch. App., 349; affirmed, L. R., 1 Eq. Cas., 161.
*Attorney General vs. Colney Hatch*, L. R., 4 Chan. App., 146.
*Manhattan vs. Barclay*, 7 N. Y. Sup. Ct. Rep., 523, 418, 218.
*Gerrish vs. Brown*, 81 Am. Dec., 569–573.
*People vs. Gold Run Co.*, 66 Cal., 138.

RELATION STATE OCCUPIES TO FRESH WATER ACTUALLY NAVIGABLE STREAMS.

In those States where the State owns to the center of the stream, it occupies toward such streams the same relation which the riparian owner on a fresh-water stream, whose title extends to the center thereof, occupies towards it.

*Wood on Nuisances*, 474.

The State is the owner absolutely of the stream to high-water mark, and as such owner may devote the stream, or any part thereof, to such purposes as it sees fit, so long as it does not materially obstruct navigation.

*Wood on Nuisances*, 478.

RIGHTS AND PROPERTY OF STATE IN WATERS IN BED OF RIVER.

Navigability in law and in fact exists so far as the Mississippi river is concerned. As a navigable river the Mississippi is a great public highway in which the people of the State of Missouri have paramount and controlling rights. These rights consist chiefly in the right of property in the

soil in the bed of the river and the right to the use of the water flowing over it for the purpose of transportation, domestic and manufacturing purposes, and of commercial intercourse. The soil of a navigable river is the bed of the river; the river itself is the water flowing in its channel. An unauthorized invasion of the rights of the public to navigate the water flowing over the soil is a public nuisance, and an unauthorized encroachment upon the soil itself is known in law as purpresture. Great water highways belong to the same class of public rights and are governed by the same general rules applicable to highways upon land. Any obstruction or interference with a public highway on land is a nuisance.

*Russell on Crimes*, 349.

All unauthorized intrusion upon a waterway for purposes unconnected with navigation or passage is a nuisance.

*Commonwealth vs. Caldwell*, 1 Dallas Rep., 150.

*Commonwealth vs. King*, 13 Metcalf, 115.

Accordingly it has been held that to make use of the banks of a river for dumping places from which to cast into the river annually 600,000 cubic yards of mining debris, consisting of boulders, sand, earth, and waste materials, to be carried by the velocity of the stream down its course and into and along a navigable river, is an encroachment upon the soil of the latter and an unauthorized invasion of the rights of the public, and when such invasions affect the rights of an entire community, neighborhood, or any considerable number of persons, to the free use and enjoyment of their property, they constitute, however long continued, a public nuisance.

*People vs. Gold Run Co.*, 66 Cal., 147.

And in *Garesh vs. Brown*, 51 Me., 262, the court says:

"A person who casts at random filth, or trash, or waste material, into a public river, to float or sink as it may,

without guidance or direction, can in no sense be said to be in the use of such river for lawful purposes."

Whenever an indictable nuisance exists there is a co-ordinate remedy in equity to restrain it by injunction.

But it will be claimed, no doubt, that the defendants have acquired a right from custom and prescription, by use of the Illinois and Michigan canal, which empties into the Desplaines, thence into the Illinois, and through it into the Mississippi, to so run their sewage through the new channel, through said rivers, and into the Mississippi. And no doubt, also, it will be claimed that the legislature of the State of Illinois has authorized it, and therefore the State of Missouri cannot complain because the channel is built wholly within the jurisdiction of the State of Illinois. It may be that the people of Illinois have silently acquiesced in the construction of this sewage channel, and upon the strength of that silent acquiescence much money may have been invested, and that this money equally with all other invested in the State of Illinois, as capital invested elsewhere in these United States, is entitled to the protection of law. But the investment of a large amount of capital does not give any more protection of law, nor does it authorize a violation of law. A legitimate private business or some action of a city founded upon a custom may grow into a force to threaten the safety of the people of the State in which it is situated and that of surrounding States, and threaten the destruction of public and private rights, and when it develops into that condition the exercise of the right or custom upon which it is founded becomes unreasonable, because dangerous to public and private rights, and cannot be invoked to justify unlawful acts. Every business and every act, whether carried on by individuals or by municipalities, has its laws for its government and control, and these require of those who are engaged

therein to so conduct and carry on the same that they shall not violate the rights of others.

Accompanying the ownership and use of every species of property is a corresponding duty to so use it that it shall not abuse the rights of others. Upon that underlying principle, neither State nor Federal legislature can, by silent acquiescence or by attempted legislation, take private property for public use, nor divest the people of a State of their rights in the navigable waters of the State for the use of public or private corporations, however extensive or long continued. The rights of the people in the navigable rivers that flow between sovereign States are paramount and controlling. The sovereign State of Missouri holds the absolute right to the unpolluted use of all navigable waters and to the soil under them to the center of the middle of the main channel, subject, of course, to any rights in said waters which may have been surrendered to the Federal Government.

*Georgetown vs. Alexandria Canal Co.*, 12 Peters, 91.

This soil Missouri holds as the trustee of a public trust, under act of Congress, for the benefit of the people; and she may, by her legislature, grant it to an individual, but she cannot grant the rights of the people to the use of the waters flowing over it. These are inalienable rights. One of these rights of the people is to have the water come to them in its natural and accustomed flow, free from pollution or sewage cast into it by artificial drains from other States or cities.

The legislature of the State of Missouri cannot authorize the casting into the waters of the Mississippi river on Missouri soil the sewage of its great cities, to such an extent as to pollute and destroy for primary (*i. e.*, for domestic and manufacturing) purposes the waters of said river. If the State of Missouri cannot do this, then certainly the State of Illinois cannot authorize and assist one of its municipalities to do so.

Against a public nuisance, however long continued, the State is bound to protect the people.

*County of Sacramento vs. Cent. Pac. R. R.*, 10 Pac. Coast Law Journal, 27.

*People vs. Booth*, 32 N. Y., 397.

And for that purpose the attorney general, as the law officer of the State, has the power to institute a proceeding in equity in the name of the people, to compel the discontinuance of the acts which constitute the nuisance.

*People vs. Gold Run Co.*, 66 Cal., 152.

This is founded upon the proposition that the attorney general is the chief law officer of the State, and that all the people of the State are interested in the question and have the right to use all the navigable waters within the State, and that the chief law officer of the people, in the name of the State, should prevent the pollution of or interference with a public highway, to wit, a navigable stream, over which all the people have the right to travel, and from which to use water.

*Idem.*

The act of Congress admitting Missouri and Illinois as States declared that the eastern boundary of Missouri and the western boundary of Illinois should be the middle of the main channel of the Mississippi river. This court, in the case of *City of St. Louis vs. Rutz*, 138 U. S., 226, held that the two States of Illinois and Missouri have concurrent jurisdiction generally over the river, and each State has exclusive territorial jurisdiction over that portion adjacent to its own shore.

In England the title to the bed of all navigable streams is vested in the Crown. Anciently it was in the power of the King to convey this to private persons at his pleasure, but this royal right was abridged by that historic docu-

ment known as *Magna Charta*, and it now requires an act of Parliament to convey this portion of the public domain. To the rights of the English sovereign the several States succeeded upon the establishment of American independence. The shores of navigable waters, and the soil thereunder, were not granted by the Constitution to the United States, but were reserved to the several States, respectively.

*Pollard vs. Hagan*, 3 Howard U. S. Rep., 212.

It may therefore be regarded as American law that the territorial sovereign, be it State or Federal government, is the owner in fee of the bed of all navigable streams within its limits.

*Scudder vs. Trenton Falls Co.*, 1 N. J. Eq., 694.

*Pomeroy on Water Rights*, sec. 220.

But in the case of non-tidal rivers the question of title to the bed of the stream, as between State and riparian owner, will depend on whether the common-law doctrine of navigability has been adopted or rejected by the State. Common-law navigable streams are those only in which the tide ebbs and flows. But this test is not applied in most of our States, and where it is not, the beds of all streams in fact navigable for useful purposes of commerce belong to the State, whether the water is salt or fresh, and whether or not the tide ebbs and flows. But where the common-law rule exists, actually navigable non-tidal streams are not legally navigable streams. This is so in Illinois, and the title, therefore, of a riparian owner in Illinois, whose lands are bounded by the Mississippi river, extends to the middle of the main channel of the stream.

*Barney vs. Keokuk*, 94 U. S. Rep., 324.

Therefore the State of Illinois does not own the land to the center of the bed of the stream.

It is otherwise in Missouri, where the Mississippi and

Missouri rivers are regarded as navigable streams by its law, and the title to the bed of the stream to the middle of the main channel is in the State, and an unbroken line of decisions in Missouri hold that the riparian proprietor on navigable streams has no ownership in the bed of the river.

*Benson vs. Morrow*, 61 Mo., 345.
*Hahn vs. Dawson*, 134 Mo., 581.

Therefore Missouri has jurisdiction of the Mississippi river to the middle of the main channel, and hence it is within the power of the State of Missouri to protect these waters from pollution, in order to preserve the health of her citizens, and to protect the soil of the bed of the stream from having large deposits of sewage and filth and noxious matters drained from the city of Chicago deposited upon the bed of the stream, to the detriment both of the bed of the stream and of the water.

Injury to the purity or quality of the water of a flowing stream to the detriment of riparian owners constitutes a nuisance as much as a permanent obstruction.

*Dwight Printing Co. vs. Boston*, 5 Cent. Law Journal, 71.

It is a familiar exercise of the power of a court of chancery to prevent by injunction injury to water-courses by corruption, obstruction, or diversion, on the principle of restraining irreparable mischief.

*Lewis vs. Stein*, 16 Ala., 214.
*Holsman vs. Boiling Spring Co.*, 14 N. J. Eq. Rep., 335.
*Angell on Water Courses*, sec. 140, B. and C.

Notwithstanding ordinary remedies for public nuisances, it is now well settled that a court of equity will take juris-

diction of a proceeding for injunction filed by the attorney general.

Angell on Water Courses, sec. 565.

Attorney General *vs.* Birmingham, 4 Kay & Johnson's Rep., 528.

The bringing of water by unnatural or artificial means into a stream is an actionable nuisance to those below, even though they sustain no actual damages.

Wood on Nuisances, sec. 363.

Frequent ground of application for the preventive aid of equity by injunction is found in cases of pollution of water by a flow of sewage from towns and cities into streams or rivers, whose waters are thereby injured or rendered unfit for use. In cases of this nature the preventive jurisdiction of equity is well established, the general doctrine being that the fouling or pollution of water in a stream by such sewage constitutes a nuisance and affords sufficient ground for relief by injunction.

High on Injunction, sec. 810.

In conformity with this doctrine, the owners of land upon the banks of a river below a city may enjoin the city authorities from polluting the river by sewage.

*Attorney General vs. Leeds*, Corp., L. R., 5 Chan., 583.

A State may tolerate purprestures, but it cannot license or protect an actionable nuisance upon its public, navigable streams.

Wood on Nuisances, sec. 93.

LEGISLATIVE AUTHORITY NO EXCUSE FOR POLLUTING NAVIGABLE NON-TIDAL STREAMS.

It is a matter of no importance, so far as the question of liability is concerned, whether the pollution arises from private works or from drainage of towns into streams under legislative authority. If the water of a navigable stream, in which the tide does not ebb and flow, is adapted to domestic use, the legislature has no power to authorize its use in such a way as to destroy its usefulness by riparian owners for such purposes without compensation; and any authority of that character will be utterly inoperative as a defense to a suit by a riparian owner injured thereby.

Wood on Nuisances, secs. 427, 428, 429.
*Attorney General vs. Kingston*, 12 L. T., N. S., 665.
*Hudson R. R. Co. vs. Loeb*, 7 Robt. (N. Y.), 418.
*Carhart vs. Auburn Gas Light Co.*, 22 Barb., 297.

In a case in the English courts, 12 L. T., N. S., 665, *supra*, the court passed upon this question and said:

"Riparian owners and the public have the right to take water from navigable streams, and the pollution of such waters so as to destroy their value for primary purposes by leading into the same the sewage of the town is a nuisance, and the fact that sewage has been sent there for many years does not give a prescriptive right to continue it, when by an increase thereof it becomes a nuisance."

And the fact that the public convenience or that the preservation of public health requires that the sewage of a town shall be removed, and that there is no other method by which it can be disposed of except to discharge it into a running stream, will not justify its discharge there to the injury of riparian owners. And the fact that the population of the town is arge, and the persons to be affected by the nuisance are

few, makes no difference. In the language of the court, in *Attorney General vs. Leeds*, L. R., 5 Ch. App., 589:

"The court cannot say that the small population along the valley of the Aire between Leeds has not a right to prevent a nuisance from being inflicted upon them by a large and more populous district."

See also Wood on Nuisances, sec. 434.

DISTANCE DOES NOT ALTER CASE.

It is of no importance in determining the question of nuisance by pollution of waters whether the works or causes producing it are near to or far removed from complaining persons. The simple question is whether the water coming to the plaintiff's premises is impaired in value for the ordinary uses of life or for special lawful uses by reason of any foreign substance imparted thereto by another from artificial causes, and whether such impurities arise from the acts of the defendant or his agents.

Wood on Nuisances, 436.

9 N. W., 665.

ACTUAL DAMAGE NOT NECESSARY.

It is not necessary to an action for nuisance arising from the pollution of water to say that the matter discharged into the stream does not injure the water or improves the water; it is the right of all persons to have the water come to them in its natural state, and they are to exercise their own taste and judgment, and are not obliged to have their property improved against their will.

*Holsman vs. Boiling Springs Co.*, 13 N. J. Eq., 335.

Therefore when water is so far polluted as to injure its primary use, although it is not used for that purpose, the occasion for complaining of injury is created.

*Attorney General vs. Stewart*, 20 N. J., 415.

So when the use of water renders it injurious to health or impairs the comfortable enjoyment of property, a nuisance is created, actionable at the suit of all persons specially injured, and indictable if the same is public or the injury common.

Wood on Nuisances, 442;
Stein *vs.* Burden, 60 Am. Dec., 453.
*Carhart vs. Auburn Gaslight Co.*, 22 Barb., 297.
*People vs. Townsend*, 3 Hill (N. Y.), 479.
*Mills vs. Hall*, 9 Wend., 315.

And the fact that the water of a stream has been polluted in a similar way for twenty years does not confer prescriptive right to continue it, particularly when the nuisance results from an increase of pollution; but in order to make out the case of a nuisance under such circumstances, the injury complained of must be a substantial right and must result from artificial causes and from an actual increase of the pollution.

*Duke of Bucleugh vs. Crown*, 5 Mach. (Sc.), 214.
*Robinson vs. Stuart*, 11 Mach. (Sc.), 149.
*Miller vs. Marshall*, 5 Mur., 27.
*Holsman vs. Boiling Springs Co.*, 14 N. J. Eq., 335.

In this case for many years the city of Chicago has drained its sewage into the Chicago river and into Lake Michigan, adjacent to the shores of which is built the city of Chicago, and vast deposits of sewage, filth, debris, and refuse have thus accumulated. It is now proposed, by means of an artificial channel and the use of a system of wheels and machinery located at a point on the Chicago river, to reverse the river current, which flows naturally into Lake Michigan, and to turn it into the channel, thence into the Desplaines river, thence through the Illinois, and into the Mississippi river, and by these means there will be carried this vast accumulation of years of sewage and debris and filth into

the Mississippi river, where the same will be deposited upon its bed and upon soil belonging to the State of Missouri, not only thus actually injuring the soil in the bed of the river, but also polluting and rendering unfit for primary uses the water of this navigable stream, the jurisdictional control of which, subject to the rights of the Federal Government for purposes of interstate commerce, belongs exclusively to the State of Missouri to the middle of the main channel.

This action of the Sanitary District expressly violates the rights of the State of Missouri, and is an illegal action. An injunction will lie at the instance of this State to restrain.

*People vs. Gold Run Co.*, 66 Cal., 147.

This case therefore presents the judicial question of whether one State can create and continue a nuisance in navigable waters forming a boundary between it and another State injured by such nuisance. Such nuisance creates a controversy between two States which can only be determined by this court. We therefore submit that the bill should be permitted to be filed, and that process should be ordered to issue.

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